

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1463 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? No.
 2. To be referred to the Reporter or not? No.
 3. Whether Their Lordships wish to see the fair copy of the judgement? No.
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? No.
 5. Whether it is to be circulated to the Civil Judge? No.

KISHORKUMAR LOKUMAL CHANDANI

Versus

CHAIRMAN

Appearance:

MR HM PARIKH for Petitioner
MR KS JHAVERI for Respondent No. 1 and 2.
MR AJ PATEL for Respondent No. 3

CORAM : MR.JUSTICE M.S.SHAH

Date of decision: 20/04/98

ORAL JUDGEMENT

Rule. Service of rule is waived by learned advocate Mr. K.S. Zaveri, learned advocate for respondents no. 1 and 2 as well as by Mr. A.J. Patel, learned advocate for the respondent no. 3.

2. This petition under Article 226 of the

Constitution of India challenges the notice dated 6-12-1997 and the order dated 26-12-1997 cancelling the building permission granted by Anand Area Development Authority (AADA) in favour of the petitioner and the subsequent notice dated 17-2-1998 for demolition of the construction being put up by the petitioner.

3. The petitioner purchased the land in question from Bochasan Vasi Swaminarayan Trust and applied for building use permission to the Anand Area Development Authority which granted the building permission on 10-7-1997 (Annexure-A to the petition). In the meantime, the respondent no. 3 herein had filed Civil Suits against the petitioner for certain reliefs on the basis of the agreement to sell which according to respondent no. 3 was executed by Vahivatkarta of the aforesaid trust in favour of respondent no. 3.

4. In Civil Suit No. 129/97 respondent no. 3 herein prayed for interim injunction to restrain the present petitioner from putting up any construction on the land in question. The said interim injunction application was dismissed by the Civil Court, Anand on 24-12-1997. Respondent no.3 herein, the plaintiff of that suit, therefore, filed Appeal from Order No. 636/97 which also came to be dismissed by this Court on 21-1-1998. Thus, there was no impediment against the petitioner proceeding with the construction, as far as Civil Suit No. 129/97 was concerned.

5. Similarly, respondent no. 3 had filed another Civil Suit being Civil Suit No. 51/96 wherein respondent no. 3 herein had prayed for interim injunction restraining the petitioner from transferring the land to any third party. Below the said interim injunction application the Trial Court passed the order dated 3-6-1996 directing the petitioner to maintain status-quo. Ultimately, after hearing the parties, on 10-3-1997 the Civil Court, Anand passed the interim injunction order restraining the petitioner herein (defendant no. 3 of that suit) from transferring the land in question to any third party.

6. The impugned notice dated 6-12-97 and order dated 26-12-97 are passed by Anand Area Development Authority to cancel the building permission granted in favour of the petitioner on 10-7-1997 on the ground that the Civil Suits were pending in respect of the land in question and that Civil Court Anand had passed the order directing the petitioner herein to maintain status-quo.

7. In response to the notice issued by this court the Anand Area Development Authority as well as respondent no. 3 have appeared and contested the present petition. It is submitted that since the Civil Court, Anand had passed the order dated 6-3-1996 directing the petitioner herein to maintain status-quo and in the body of the judgment dated 10-3-1997 the Civil Court, Anand had observed that status-quo was required to be maintained, the petitioner was restrained from putting up any construction on the land in question. It is therefore submitted that Anand Area Development Authority had rightly cancelled the permission as the petitioner was proceeding with construction in spite of the said injunction order passed by the Civil Court, Anand.

8. It is further submitted on behalf of the respondents that the Charity Commissioner has also initiated proceedings against the petitioner herein on 16-3-1998 on an application u/s 41(A) of the Bombay Public Trusts Act, 1950 and during pendency of those proceedings ad-interim injunction has been granted restraining the petitioner herein from proceeding with the construction. On this ground also the impugned order is sought to be supported.

9. Having eard learned advocates for the parties, it is not possible to accept the contention urged on behalf of the respondents because when the impugned orders were passed there was not any ad-interim injunction order operating against the petitioner restraining the petitioner from proceeding with the construction on the land in question. Civil Court's order dated 3-6-1996 directing the petitioner to maintain status-quo is required to be read in the light of the prayer made by respondent no. 3 in the interim injunction application. The only prayer in that application was to restrain the petitioner herein from transferring the land in question and no ad-interim injunction was prayed for to restrain the petitioner from putting up any construction on the land in question. Similarly, by the interim order dated 10-3--1997 the petitioner was not restrained from putting up any construction on the land in question but interim injunction was only to restrain the petitioner from transferring the land in question. In the aforesaid Civil Suits filed by respondent no. 3 there was no interim injunction against the petitioner herein from putting up construction on the land in question.

10. In view of the aforesaid orders, it must be held that Anand Area Development Authority has clearly erred in law as well as in fact in issuing show-cause notice

and in cancelling the building permission by its order dated 26-12-1997 and consequential notice for demolition dated 17-2-1998 and they are liable to be quashed and set aside.

11. As regards the contention raised on the basis of the order of the Charity Commissioner, it is required to be noted that the impugned notice dated 6-12-1997 as well as the notice for demolition dated 26-12-1997 were issued before any proceedings were instituted before the Charity Commissioner. Hence the impugned order cannot be sustained on the basis of any subsequent order passed by the Charity Commissioner and that, too, after issuance of notice by this Court in the present petition.

12. Mr. Parikh, learned advocate for the petitioner has sought to challenge initiation of the proceedings before the Charity Commissioner by relying upon the decision of this Court reported in 1992 (1) G.L.H. 331. It is not necessary to go into the merits of that contention because the matter is still pending before the Charity Commissioner and the Anand Area Development Authority had not passed the impugned orders on the basis of these proceedings.

13. In the result, this petition is allowed. The notice dated 6-12-1997 (Annexure - C), order dated 26-12-1997 (Annexure - D) and also notice dated 17-2-1998 (Annexure - G) to the petition are hereby quashed and set aside. It goes without saying that consequently the permission dated 10-7-1997 issued by Anand Area Development Authority gets revived.

14. It is clarified that this Court has not gone into merits . of the disputes pending before the Charity Commissioner and the Charity Commissioner shall decide the same in accordance with law. This Court has also not gone into the merits of the disputes pending between the parties before the Civil Court, Anand.

15. Rule is made absolute to the aforesaid extent with costs.